



May 25, 2011

The Honorable Jerome Horton
Chair
Board of Equalization
450 N Street
Sacramento, California 95814

Re: Proposed Regulation 2558.1 Wine

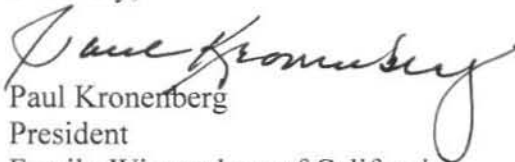
Dear Chairman Horton,

Family Winemakers of California ("FWC") submits the following comments in opposition to the California State Board of Equalization's ("BOE") proposed adoption of California Code of Regulations, Title 18, Section 2558.1. FWC represents 650 wine producers throughout California. The regulation proposed by BOE would classify certain wine products as "distilled spirits" for purposes of taxation.

FWC continues to be opposed to the proposed regulation. The testimony offered at the May 25 hearing is limited to the association's ongoing objection to the BOE's assertion that it has the authority to regulate in this area. FWC raised that objection in the original flavored malt beverage regulations and raised it again in its January 3, 2011 submission on this pending regulation. Family Winemakers wants to ensure that the official hearing record reflect the basis for its objection since the public notice did not acknowledge the ongoing court case on the question of the BOE's authority. Citing the Office of Administrative Law's ministerial approval is not, in FWC's view, determinative.

FWC would urge the board to defer adopting the regulation until the authority issue has been fully adjudicated. The *Diageo-Guinness USA and Flavored Malt Beverage Coalition v. California State Board of Equalization* case is still pending at the 3rd District Court of Appeals. It is waiting the scheduling of oral arguments. FWC doesn't believe there is any urgency in adopting the clarification proposed by the regulation given the extensive discussion over many months among the affected stakeholders.

Sincerely,


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Family Winemakers of California

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